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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

AUDREY M. RENNER, Plaintiff, vs. TAKEDA PHARMACEUTICALS U.S.A, INC. Defendant.	Dept. No. Cause No. **COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, by and through counsel of record, and for her Complaint against Defendant Takeda Pharmaceuticals U.S.A, Inc. alleges as follows:

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GENERAL ALLEGATIONS

1. Plaintiff Audrey M. Renner ("Ms. Renner") is an individual. She was, at all times pertinent hereto, a resident and citizen of the State of Montana.

2. Defendant Takeda Pharmaceuticals U.S.A, Inc. ("Takeda") is a Delaware corporation with its principal place of business at One Takeda Parkway, Deerfield, Illinois.

3. Ms. Renner was, at all times pertinent hereto, an employee of Takeda. She was employed in Missoula, Montana as a Takeda sales representative. Ms. Renner was a Montana employee. Takeda paid employment taxes to the State of Montana and was otherwise obligated to comply with Montana law in connection with Ms. Renner's employment.

4. This case involves a claim of wrongful termination of employment. The matter in controversy exceeds the sum of $75,000.

5. The matter in controversy involves a claim between citizens of different States.

6. Diversity jurisdiction exists in this court, pursuant to 28 U.S.C. 1332(a)(1).

7. Venue is proper in this court.

COUNT ONE - WRONGFUL TERMINATION

8. Plaintiff realleges each of the other allegations of this Complaint, as if fully set forth herein.

9. Takeda hired Ms. Renner in 2006.

10. Ms. Renner initially served as a sales representative in the Tri-Cities Territory of Takeda's Northwest Region, Big Sky Northwest District. She served as a sales representative in the Tri-Cities territory from April 18, 2006 until May 28, 2012. She met all requirements for continued employment during that timeframe. In her performance reviews, she was found to have consistently met or exceeded the standards required by Takeda.

11. On or about May 28, 2012, Takeda assigned Ms. Renner to a new district within the Northwest Region, designated the Pacific Northwest District, which included Seattle, Washington; Tacoma, Washington; Bellevue, Washington, Spokane, Washington; Coeur d'Alene, Idaho; Anchorage, Alaska, and Missoula, Montana. Ms. Renner was specifically assigned to the Missoula territory. The Missoula territory included Missoula County and outlying areas. It was much different than the prior territory in which Ms. Renner had worked. The medical community was smaller, the

distances between health care provider ("HCP") offices were much larger, and the patient population was smaller.

12. Takeda tracks employee performance by several metrics. The most important to Takeda, and most heavily weighted in its evaluations, is "sales performance". Takeda measures "sales performance" within a sales region and territory by the number of prescriptions filled for drugs within the Takeda product group.

13. Sales representatives are evaluated on "sales performance" despite the fact that healthcare providers, patients, and even insurance organizations make the ultimate decisions as to whether a particular drug is appropriate or covered for a patient's use.

14. Takeda requires its sales representatives to utilize "assertive selling skills" to overcome healthcare provider objections to the use of Takeda drugs, and to motivate healthcare providers to change their prescription-writing behaviors. Takeda's sales objective is to encourage healthcare providers to prescribe drugs from the Takeda family, rather than competing companies' pharmaceuticals. Takeda's ultimate objective is to see that its sale goals are met or exceeded. Each sales representative receives constant pressure to ensure that Takeda's sales goals, as measured by prescriptions written in the representative's territory, are met.

15. Takeda establishes the sales goals for its sales representatives within each territory. Many of the factors that dictate achievement of sales goals are outside of the control of sales representatives. It is ultimately up to patients and healthcare providers to decide what drugs are appropriate for the particular patient's use. Many factors affect a physician's willingness to prescribe or utilize a particular drug, including patient feedback, experiences of other physicians and healthcare providers, medical literature, the physician's and healthcare provider's own practices and beliefs, and the marketing efforts of Takeda itself. Despite this, Takeda evaluates the success of sales representatives based upon prescriptions written in their territories by physicians for their patients.

16. Upon information and belief, the sales representative who preceded Ms. Renner in the Missoula territory was not able to meet Takeda's sales goals for its various products. Nor was Ms. Renner's counterpart, Chris Ashton, able to meet sales goals.

17. Once Ms. Renner became established in the Missoula territory, Takeda's sales in the territory were at or near target with respect to those particular drugs being marketed by Ms. Renner. The exception was a newly introduced drug, Brintellix.

18. Brintellix was developed by another pharmaceutical company, Lundbeck. Lundbeck contracted with Takeda to promote the new drug.

19. Upon information and belief, Takeda had hired approximately 200 new sales representatives nationally, and conducted a degree of restructuring of its sales force in order to market Brintellix. Sales of the drug kicked off in January, 2014.

20. In conjunction with the kickoff of Brintellix, Takeda hired a new District Sales Manager to oversee the Pacific Northwest District, which included Ms. Renner's Missoula territory. The new District Sales Manager was named Tom Bott ("Mr. Bott"). Mr. Bott was a superior of Ms. Renner and an employee of Takeda.

21. Takeda is vicariously liable for Mr. Bott's conduct.

22. From the outset, Mr. Bott made clear that he would aggressively assert himself over his sales representatives. In January, 2014, he spoke to all of his district sales representatives in a breakout session at the national sales meeting in Las Vegas. During the meeting, he used combative and foul language when speaking to the group, and told the employees he could "fire any of them at any time." This statement was intended to intimidate, and is in direct contradiction with Montana law.

23. Montana law requires good cause for termination after the conclusion of a six-month probationary period.

24. Brintellix was released into a national market in which numerous other tried and tested antidepressants already existed and were available for patient use. As a consequence, physicians were slow to adopt and recommend the new drug.

25. During the first several quarters of 2014, Mr. Bott's feedback to Ms. Renner during his evaluative field coaching was generally positive. He commended her for many aspects of her work, recognized her proficiency in conveying the message of all three of the Takeda products she was representing, and acknowledged that Ms. Renner "does a good job of reinforcing what a [Health Care Provider] is currently doing and . . . handles any concerns they may have." To the extent he offered any criticism, it was that Ms. Renner was "having a tough time moving customers to change their beliefs", i.e. to begin prescribing Brintellix.

26. As 2014 progressed, it was becoming increasingly clear that Brintellix sales were a disappointment nationally for Takeda. This was recognized in the fact that Takeda's national goals for the drug were not being met, a fact well known within the pharmaceutical industry. Takeda

began placing additional pressure on its district managers and sales representatives to push Brintellix.

27. In addition to setting unrealistically high sales goals in the Missoula territory, Takeda, through Mr. Bott, began pressuring Ms. Renner to focus on Brintellix, with the ultimate goal of increasing sales numbers.

28. During the first three evaluation periods of 2014, sales goals in the Missoula territory for the other Takeda products represented by Ms. Renner were near or exceeding goals. Goals were exceeded for Takeda product Dexilant, for example, and nearly exceeded for Amitiza. However, Brintellix was well behind, at 63% of goal. Nationally, Brintellix had also failed to meet sales expectations, with only 79% goal achievement. Internal sales data for Brintellix showed it to be far behind Takeda's goals. With the exception of California territories, most territories in the Northwest region were at a fraction of Takeda's original sales goals.

29. At the same time Brintellix was under-performing, Takeda was attempting to position itself as a successful marketer of drugs developed by other companies. Upon information and belief, Takeda executives were concerned not only because of the lack of revenue resulting from Brintellix's slow sales, but also because of the impact on upon future co-promotion agreements.

30. As a result, Takeda placed increasing pressure on its district managers like Mr. Bott to improve sales. This pressure was in turn exerted downward on sales representatives like Ms. Renner.

31. In April, 2014, Mr. Bott conducted a field ride with Ms. Renner. During that time, he tried to force Ms. Renner to engage in promotion of Brintellix by marketing benefits of the drug not approved by the Food and Drug Administration ("FDA"). This practice is known as "off-label promotion" and is both unethical and illegal under 21 U.S.C. 352(a), 21 U.S.C. 355(a) and FDA interpretations of those statutes. *See, e.g.,* 37 Fed. Reg. 16, 503 (Aug. 15, 1972). This occurred again during each of the subsequent field rides Mr. Bott conducted with Ms. Renner.

32. Ms. Renner continued to receive complimentary evaluations from Mr. Bott through August, 2014. However, by fall, 2014, it was becoming clear that poor results nationally for Brintellix were not an anomaly. Takeda representatives nationally and regionally continued to struggle to achieve Takeda's sales goals, and were largely unsuccessful in doing so. This was also true in the Missoula territory.

33. Shortly before Thanksgiving, 2014, Mr. Bott called Ms. Renner after work on a Friday night. He proceeded to angrily tell Ms. Renner that she was failing and had been failing since March, 2014. He advised Ms.

Renner she needed to improve sales by the end of the quarter, with only one month remaining. Following this phone call, Mr. Bott's attitude toward Ms. Renner became negative, and increasingly so over time.

34. After this phone call, Mr. Bott began an ongoing course of conduct intended to pressure Ms. Renner to leave the company. He complained about her use of earned sick days, despite knowing that she had been diagnosed with psoriatic arthritis and was undergoing treatment including chemotherapy. While Ms. Renner was on bereavement leave, he contacted her via text messaging (a direct violation of Takeda policy) and imposed work responsibilities on her. He placed pressure on her to drive and conduct physician visits despite dangerous road conditions. He denied her sample bottles of Brintellix which were given to other sales representatives. He failed to include her in training sessions. He ultimately asked that she be required to undergo a 60 day "counseling plan".

35. Mr. Bott again engaged in off-label promotion on a field ride with Ms. Renner while she was under the 60 day counseling plan. Again, Ms. Renner refused to engage in such selling practices.

36. In mid-March, 2015, Ms. Renner successfully completed the counseling plan. Mr. Bott advised her that Susan Glave, Regional HR Manager and David Ricketts, Regional Sales Director and Mr. Bott's

superior, were both very positive about her dedication and success during the counseling plan. Mr. Bott advised Ms. Renner that Ms. Glave had said that a representative that proved her level of commitment while on a counseling plan was a "keeper".

37. Ms. Renner's successful completion of the counseling plan meant that she could not be terminated at that time for good cause.

38. Shortly thereafter, Mr. Bott began scrutinizing Ms. Renner's fuel logs for record keeping discrepancies. This was done to establish a pretext to accomplish her termination. Approximately two weeks after her successful completion of the counseling plan, Mr. Bott created a detailed analysis of Ms. Renner's fuel receipts for the purposes of suggesting that she was not complying with record-keeping requirements.

39. Despite spending considerable time and effort investigating these alleged record-keeping errors, Takeda did not notify Ms. Renner that she was under investigation, request that she correct any records, or ask her to review the records to provide a considered response. Nor did Mr. Bott coach her to keep more accurate records. Instead, Takeda called Ms. Renner into a surprise phone conference with an investigator who identified himself as a former police officer. The telephone conference occurred on May 15, 2015. Ms. Renner was not given advance notice of the purpose of

the call, nor was she given an opportunity to prepare. Nevertheless, she identified significant errors in the assumptions made by the investigating personnel. Despite errors in the investigation and its conclusion, Takeda terminated Ms. Renner shortly thereafter.

40. This termination occurred even though Ms. Renner had no prior history of significant employment actions, had met all other requirements for continued employment, and had been employed at Takeda for nearly a decade.

41. Ms. Renner requested appeal of the termination. Takeda advised that no appeal procedure existed. It refused to reconsider its decision.

42. Ms. Renner also pointed out to Takeda numerous violations by Mr. Bott of company practices and procedures. Upon information and belief, these included his extensive use of communications methods prohibited by Takeda, such as social media and texting. This allowed him to communicate with representatives without making a record in the Takeda system. Ms. Renner also advised Takeda of Mr. Bott's off-label promotion practices and informed Takeda that she felt Mr. Bott sought a pretext to terminate her based upon her refusal to go along with his off-label promotion. Despite this, Takeda persisted in its refusal to reinstate

her employment. Upon information and belief, Takeda took no action against Mr. Bott.

43. It is believed that other employees also complained of Mr. Bott's off-label promotion and other improper behaviors. In the face of Mr. Bott's inappropriate conduct, Takeda stood behind him and his efforts to secure the termination of Ms. Renner's employment.

44. At the time of her termination by Takeda, Ms. Renner had completed the presumptive probationary period established by Montana law at Mont. Code Ann. § 39-2-904(2)(b).

45. Ms. Renner was discharged without good cause.

46. Ms. Renner has suffered damages, including, but not limited to, loss of her employment benefits of over $120,000/year.

COUNT TWO: EXEMPLARY DAMAGES

47. Plaintiff realleges each of the other allegations of this Complaint as if fully set forth herein.

48. Ms. Renner was discharged in retaliation for her refusal to violate public policy and/or for her reporting of a violation of public policy, i.e. her refusal to engage in off-label promotion of products and her criticism to Mr. Bott and his off-label promotion of products. Discovery may reveal additional improper reasons for the discharge.

49. Ms. Renner's discharge was in violation of Mont. Code Ann. § 39-2-904(1)(a).

50. Takeda's termination of Ms. Renner was committed with actual malice as defined by Mont. Code Ann. § 27-1-221(2) in that Takeda knew of facts or intentionally disregarded facts creating a high probability of injury to the plaintiff and deliberately proceeded to act in conscious or intentional disregard of the high probability of injury, or with indifference to the high probability of injury.

51. In terminating Ms. Renner, Takeda is also guilty of actual fraud, in violation of Mont. Code Ann. § 27-1-221(3), in that Takeda made representations with knowledge of their falsity. Said representations included both provision of a false basis for her termination, and that she could be terminated at will and without good cause.

52. Takeda committed actual fraud by concealing material facts, including the basis for termination and Ms. Renner's employment rights, with the purpose of depriving her of legal rights concerning her employment and causing her injury.

53. Ms. Renner is entitled to recover exemplary damages against Takeda in an amount allowed by law.

WHEREFORE, Plaintiff Audrey Renner respectfully prays for the following relief:

1. For an award of damages, general and special;

2. For an award of exemplary damages against Defendant;

3. For an award of attorney's fees, if available.

4. For such further and other relief as this Court may deem just.

DATED this 24th day of December, 2015.

REEP, BELL, LAIRD, SIMPSON,
& JASPER, P.C.

By: ____________________
Robert T. Bell
Attorneys for Plaintiff

JURY TRIAL DEMAND

Plaintiff hereby demands trial by jury on all issues so triable.

DATED this 24th day of December, 2015.

REEP, BELL, LAIRD, SIMPSON &
JASPER, P.C.

By: ____________________
Robert T. Bell
Attorneys for Plaintiff